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Holdings, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ASUS COMPUTER INTERNATIONAL; and)
 ASUSTEK COMPUTER INCORPORATED,)
)
 Plaintiffs,)
)
 v.)
)
 INTERDIGITAL, INC.; INTERDIGITAL)
 COMMUNICATIONS, INC.; INTERDIGITAL)
 TECHNOLOGY CORPORATION ; IPR)
 LICENSING, INC. ; and INTERDIGITAL)
 PATENT HOLDINGS, INC.,)
)
 Defendants.)

Case No.: 15-cv-1716 (BLF)

**PARTIES' JOINT STATEMENT OF
 DISCOVERY DISPUTE RE:
 PLAINTIFFS' DEFICIENT
 DOCUMENT PRODUCTION**

**HIGHLY CONFIDENTIAL –
 ATTORNEYS' EYES ONLY**

PUBLIC VERSION

1 **InterDigital's Position:** InterDigital seeks the Court's resolution of a discovery dispute
2 concerning whether Asustek must produce documents from an alternative e-mail custodian.

3 During the parties' negotiations concerning email custodians, InterDigital specifically
4 asked Asustek whether it had preserved the emails of HC Hung, a former senior-level employee
5 who signed the PLA between the parties. InterDigital made clear that, to the extent Asustek had
6 not preserved Mr. Hung's emails, InterDigital would designate a replacement custodian. *See Ex. 1*
7 *at 7 (11/28/17 ltr. from M. Rees to B. Johnson).* Asustek subsequently confirmed it had Mr.
8 Hung's emails. Months later, on February 25, 2018, Asustek's witness testified that its system for
9 preserving emails upon an employee's departure may not have been in place at the time of Mr.
10 Hung's departure. *See Ex. 2 at 115:3-116:6.* To date, Asustek has produced only *two* documents
11 (out of its production of approximately 17,000 documents) listing Mr. Hung as a custodian and 35
12 other emails for which Mr. Hung is an author or recipient. Although Asustek claims to have
13 collected 31,973 emails from Mr. Hung's account, Asustek repeatedly refused to provide
14 InterDigital with the time frame for the preserved emails or the specific date of Mr. Hung's
15 departure from Asustek. It was not until two days ago that Asustek finally informed InterDigital
16 that Mr. Hung left the company in 2011.

17 If Asustek has only a small subset of Mr. Hung's total emails, the Court should allow
18 InterDigital to designate a new replacement email custodian. InterDigital has proposed such an
19 alternative email custodian (Michelle Hsu), but Asustek has flatly rejected collecting from a new
20 custodian. Instead, Asustek offers the ineffective and unhelpful proposal of running search terms
21 on two *existing* custodians from whom they have already run many *duplicative* search terms. That
22 does not address the unfairness caused by Asustek's misleading statements about the emails it had
23 preserved for Mr. Hung. InterDigital thus requests that the Court allow InterDigital to designate
24 another email custodian.

25 **Asustek's Position:** ASUS has dutifully complied with the ESI order, including
26 searching the e-mails of the custodians identified by IDC. When IDC identified Mr. Hung, it
27 asked if ASUS "will be producing e-mails from [HC Hung]." *Ex. 1 at 7.* ASUS indicated it
28 would check if it had e-mails from him, and it did. Specifically, ASUS collected 31,973 e-mails,

1 and ran the agreed-upon English and Chinese search terms through those e-mails. It de-
 2 duplicated identical e-mails among the custodians and produced every non-privileged e-mail that
 3 hit the search terms, as required by the ESI order.

4 Now, after the clock has struck midnight in discovery, IDC is complaining about its
 5 choice of custodians and the e-mails that have been searched. IDC complains that ASUS has
 6 only produced two e-mails with HC Hung as the custodian. But, if this is the measure of
 7 warranting new custodians, then IDC's production is no different. IDC's CEO Bill Merritt was
 8 identified for 8 search terms, has been employed by IDC for over 12 years, and was identified as
 9 having discoverable information across several topics in IDC's Initial Disclosures. Ex. 1, 1-3;
 10 Ex. 3 at 3. IDC represented it searched his e-mail, but IDC has only produced *one* document for
 11 which he is the custodian. IDC's Ranae McElvaine was identified for 8 different search strings.
 12 Ex. 1, 1-3. Although Ms. McElvaine is currently General Counsel, has been an employee of IDC
 13 for ##, was designated on several 30(b)(6) topics, and was identified as having discoverable
 14 information regarding "Licensing of InterDigital patents," IDC produced a total of 14 e-mails for
 15 which she is custodian.¹ Ex. 3 at 3. It is not clear how it is fair or appropriate for IDC to get to
 16 pick a new custodian when its production for certain custodians is commensurate.

17 Moreover, as IDC admits, there are 35 other produced e-mails that include HC Hung. In
 18 addition, there are at least 80 e-mails involving HC Hung that have been entered in the privilege
 19 logs produced to InterDigital. These are likely the entirety of the relevant e-mails because the
 20 two topics for which IDC designated him a custodian—licensing negotiations and financial
 21 information—would be found in other custodians' searches. *See* Ex. 1, 4-7. For example,

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

26
 27 ¹ Similarly, IDC only produce 151 e-mails where Cheryl Henry was custodian although she
 28 has been an employee at IDC since 2012, is actively involved in several negotiations by her own
 admission, and was designated as a custodian for 8 separate search strings. Ex. 8, 1-3. Relative to
 IDC's production size, this small amount raises the same questions that IDC raises here.

1 [REDACTED]
2 [REDACTED]
3 Notably, ASUS has never identified HC Hung as someone with relevant information. *See*
4 Ex. 4 at 3-6. Nonetheless, IDC chose to search his e-mails. By contrast, several individuals who
5 IDC identified as having relevant information to this litigation in its Initial Disclosures had none
6 or very few documents for which they were named custodian. For example, IDC named James
7 Nolan as having information relevant to InterDigital's technology development and engineering,
8 yet he is not a custodian on a single of the hundreds of thousands of documents InterDigital
9 produced. Ex. 20 at 3. Similarly, Richard Brezski, who IDC identified as having discoverable
10 information about "InterDigital's finances and accounting" and who was designated on several
11 30(b)(6) topics on behalf of InterDigital, is not a custodian of a single one of IDC's hundreds of
12 thousands of documents produced. Ex. 3 at 3.

13 As with the other three issues IDC raised in its draft joint statement to ASUS, ASUS has
14 offered to compromise. Even though IDC has never identified what categories of documents are
15 missing from ASUS's production as a result of the issues it raises here, ASUS has offered to
16 conduct additional searches using HC Hung's search terms on two custodians: Jacky Lu and
17 Vincent Hong. After discovery has closed and in view of similar issues with IDC's own
18 custodian search, ASUS maintains that this is the most reasonable approach. IDC's request for a
19 new custodian is a request for a fishing expedition after the close of fact discovery. IDC requests
20 to search the e-mails of Michelle Hsu—someone who IDC never even asked to depose and who
21 was never listed on IDC's supplemental initial disclosures as likely to have discoverable
22 material. Thus, IDC's request for relief is improper and unwarranted, especially in view of the
23 compromises ASUS is offering and the close of fact discovery.

24 **MEET AND CONFER CERTIFICATION:** Pursuant to Your Honor's Standing Order for Civil
25 Cases, the InterDigital hereby certifies through its undersigned counsel that the parties met and
26 conferred on March 12, 2018 pursuant to L.R. 37-1 in a good faith attempt to resolve this dispute
27 prior to filing this letter. The parties were unable to resolve their differences.
28

1 Dated: March 23, 2018

/s/ Lucy Yen

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1
2 Dated: March 23, 2018

By: /s/ Brian R. Nester

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FILER'S ATTESTATION

I, Lucy Yen, hereby attest that I obtained the concurrence of Brian R. Nester in filing this document. I declare under penalty of the laws of the United States that the foregoing is true and correct.

Executed this 23rd day of March 2018 at New York, New York.

/s/ Lucy Yen

Lucy Yen